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8 **IN THE UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 **APRIL LYNN CUMMINGS,**)
11 **Petitioner,**) **CV F 05-1553 AWI**
12 **v.**) **(CR F 05-0111 AWI)**
13 **UNITED STATES OF AMERICA,**) **ORDER DENYING MOTION**
14 **Respondent.**) **TO AMEND, VACATE OR SET**
15 **(28 U.S.C. § 2255)**
16

17 **INTRODUCTION**

18 Petitioner April Lynn Cummings (“Petitioner”) seeks relief under 28 U.S.C. section¹ 2255
19 from the sentence of 6 months imprisonment and 36 months supervised release that was imposed
20 by this court on August 17, 2005, following petitioner’s entry of a plea of guilty to one count of
21 making a false statement on a passport application in violation of 18 U.S.C., section 1542. For
22 the reasons that follow, Petitioner’s motion will be denied.

23 **FACTUAL AND PROCEDURAL HISTORY**

24 Petitioner entered a plea of guilty to a single count of making a false statement on a
25 passport application on May 16, 2005. The plea of guilty was made pursuant to the terms of a
26 negotiated plea agreement. Pertinent to the instant motion, the plea agreement provided that

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28 ¹ References to section numbers hereinafter refer to sections of Title 28 of the
United States Code unless otherwise specified.

1 Petitioner would receive the benefit of a two-point downward departure for acceptance of
2 responsibility, that she would be sentenced at the bottom end of the applicable recommended
3 sentencing range, and that the Government would not seek an upward adjustment in the
4 calculation of Petitioner's criminal history score on the basis of underrepresentation of
5 Petitioner's prior criminal history.

6 A Presentence Investigation Report ("PIR") was prepared by the Probation Department
7 preparatory to the sentencing hearing on August 15, 2005. Pertinent to the discussion here, the
8 PIR noted that during the interview for the PIR "appeared to fade in and out of reality. She told a
9 long, disjointed story about her childhood which included reported sexual abuse when she was a
10 child." PIR at 4. The PIR concluded that "the focus of any supervision should be mental health
11 treatment." PIR at 16. The PIR also noted that, by the time the sentence was imposed and
12 judgment entered, Petitioner would be very close to timing out as to her term of prison custody.

13 Plaintiff's instant motion for habeas relief was originally filed as a petition pursuant to 28
14 U.S.C., section 2241. Petitioner's section 2441 petition, which was filed on December 6, 2005,
15 is somewhat convoluted but appears to allege that Petitioner had been involved in three cases in
16 Santa Barbara County wherein Petitioner was falsely accused and/or convicted of child
17 abuse/neglect, conspiracy to commit prostitution, and attempted kidnap of her younger children.
18 The 2241 petition alleges that in the process of her embroilment in the custody battle over her
19 children, Petitioner discovered the existence of a "ring of pedophiles" that she alleges includes
20 the District Attorney, a judge, a public defender "and 50 other men from Santa Maria that
21 [Petitioner] can name." Petitioner's action pursuant to section 2241 appears to allege that, as a
22 result of Petitioner's discovery of the "pedophile ring," Petitioner has been subject to retaliatory
23 prosecution and is the subject of a "contract" for her assassination. An examination of the names
24 Petitioner lists in her 2241 petition indicates that most of the persons she alleges are part of the
25 "pedophile ring" in Santa Barbara County are court or law enforcement officers or are persons
26 who are otherwise connected in some way with Petitioner's custody dispute. Petitioner alleges
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1 sentence was imposed in violation of the Constitution or laws of the United States ... may move
 2 the court which imposed the sentence to vacate, set aside or correct the sentence.” Under section
 3 2255, "a district court must grant a hearing to determine the validity of a petition brought under
 4 that section, '[u]nless the motions and the files and records of the case conclusively show that the
 5 prisoner is entitled to no relief.' " United States v. Blaylock, 20 F.3d 1458, 1465 (9th Cir.1994)
 6 (quoting 28 U.S.C. § 2255) (emphasis in the original). The court may deny a hearing if the
 7 movant's allegations, viewed against the record, fail to state a claim for relief or "are so palpably
 8 incredible or patently frivolous as to warrant summary dismissal." United States v. McMullen,
 9 98 F.3d 1155, 1159 (9th Cir.1996) (internal quotations omitted), cert. denied, 520 U.S. 1269, 117
 10 (1997). To earn the right to a hearing, therefore, the movant must make specific factual
 11 allegations which, if true, would entitle him to relief. Id. Mere conclusory statements in a
 12 section 2255 motion are insufficient to require a hearing. United States v. Hearst, 638 F.2d 1190,
 13 1194 (9th Cir.1980), cert. denied, 451 U.S. 938 (1981).

14 DISCUSSION

15 Petitioner’s claims against the superior courts of Kern and Santa Barbara Counties appear
 16 to be based solely on Petitioner’s stated belief that this court has “superior jurisdiction” over the
 17 proceedings or judgments of state courts. This is not the case. 28 U.S.C., section 2255 permits a
 18 prisoner in custody as a result of the judgment of a “court established by Act of Congress” to
 19 challenge his sentence on a number of listed grounds. Section 2255 does not grant federal courts
 20 (i.e. courts established by Act of Congress) jurisdiction over judgments of state courts. A person
 21 confined as a result of a judgment in a state court may challenge the validity of his sentence
 22 pursuant to section 2254, but only after all remedies available in the courts of the state have been
 23 exhausted. 28 U.S.C. § 2254(b)(1). Because Petitioner’s instant action is pursuant to section
 24 2255, the court cannot address Petitioner’s claims as they pertain to proceedings or judgments in
 25 state courts.

26 To the best of this court’s ability to decipher Petitioner’s section 2255 claims, they boil
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1 down to a claim of ineffective assistance of counsel. Specifically, Petitioner alleges that her
2 attorney lied to her, intimidated her into signing the plea agreement, and colluded with others to
3 produce a “negative” PIR. Petitioner also appears to allege she was prevented from participating
4 in her own defense, although it is not clear whether this allegation is aimed at Petitioner’s
5 attorney or at persons connected with Petitioner’s state actions.

6 To establish a constitutional violation for the ineffective assistance of counsel, a
7 defendant must demonstrate (1) a deficient performance by counsel, and (2) prejudice to him.
8 United States v. Cochrane, 985 F.2d 1027, 1030 (9th Cir.1993). To prove a deficient
9 performance of counsel, Petitioner must demonstrate that his attorney "made errors that a
10 reasonably competent attorney acting as a diligent and conscientious advocate would not have
11 made." Butcher v. Marquez, 758 F.2d 373, 376 (9th Cir.1985). To show prejudice, Petitioner
12 must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional
13 errors, the result of the proceeding would have been different." Strickland v. Washington, 466
14 U.S. 668, 694 (1984). A court addressing a claim of ineffective assistance of counsel need not
15 address both prongs of the Strickland test if the plaintiff’s showing is insufficient as to one
16 prong. Id. at 697. “If it is easier to dispose of an ineffectiveness claim on the ground of lack of
17 sufficient prejudice, which we expect will often be so, that course should be followed.” Id.

18 Petitioner’s allegations all suffer from the same defect; lack of factual specificity. As
19 previously noted, mere conclusory statements in a section 2255 motion are insufficient to require
20 a hearing. Hearst, 638 F.2d at 1194. Petitioner’s allegation that her attorney lied to Petitioner is
21 nothing more than that; an allegation devoid of any facts to indicate what untrue statements were
22 made or how Petitioner relied on those statements to her detriment. Likewise, there is no
23 allegation as to how Petitioner was coerced or intimidated, what threats were made and by
24 whom.

25 As to Petitioner’s claim that her attorney colluded to produce a negative PIR, there is no
26 indication of what information contained in the PIR was, or might have been, the product of
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1 collusion. So far as the court can determine by inspection, the information contained in the PIR
2 appears to be the product of the combination of public record and the Probation Department's
3 interview of Petitioner, as well as interviews with identified third parties. Further, there is no
4 indication of how Petitioner comes to the conclusion the PIR was "negative." This court has
5 reviewed the PIR and finds that the facts set forth therein appear to be supported and that the
6 report, taken as a whole, fairly reflects Petitioner's social and criminal history. The PIR also
7 offers insight into Petitioner's condition that is highly relevant to the court's effort to craft a
8 sentence that addresses both the Government's and Petitioner's needs. If the PIR is the result of
9 some substandard behavior on the part of her attorney, then Petitioner has failed to identify how
10 that substandard behavior resulted in any prejudice to her.

11 Finally, Petitioner's claim that she was unable to participate in her own defense also must
12 fail for a lack of factual specificity. Even if the court were to presume that the basis for
13 Petitioner's claim is that her attorney failed to secure her release so that she could gather
14 evidence to prove her case against the officials from Santa Barbara County, the court could not
15 provide any relief because Petitioner does not allege facts to show that her incarceration was
16 unconstitutional in any way or that there was something that prevented Petitioner from
17 transmitting the necessary information to her attorney. To the extent Petitioner may be basing
18 her claim on the fact she was not allowed to raise a necessity defense, that claim must also fail.
19 Petitioner has not made the necessary showing that her attorney's performance fell below a
20 reasonable standard when the attorney made the tactical decision to recommend a plea of guilty
21 instead of proceeding to trial on the theory that Petitioner was being threatened by a "pedophile
22 ring" in Santa Barbara County that coincidentally included all of the people involved in her legal
23 problems in that county. See Wildman v. Johnson, 261 F3d 832, 839 (9th Cir. 2001) (a
24 defendant's disagreement with attorney's tactical decisions cannot be the basis of a claim for
25 ineffective assistance).

1 The court finds Petitioner has failed to set forth any facts to support any of the claims this
2 court has jurisdiction to consider. Because mere allegations are nothing more than mere
3 conclusory statements, Petitioner is not entitled to a hearing on her claims and the motion to
4 vacate, amend or set aside the judgment must be denied.

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6 THEREFORE, in accord with the foregoing discussion, Petitioner's motion to vacate,
7 correct or set aside the sentence pursuant to section 2255 is hereby DENIED. The Clerk of the
8 Court shall CLOSE the CASE.

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10 IT IS SO ORDERED.

11 **Dated: September 27, 2007**

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE